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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 527

CARPENTERS AND JOINERS UNION OF AMERICA, LOCAL No. 213, ET AL., PETITIONERS,

vs.

RITTER'S CAFE, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

PETITION FOR CERTIORARI FILED AUGUST 19, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

SUPREME COURT OF THE UNITED STATES

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

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positive defiance of the constitutional rights of these plaintiffs in selecting the person with whom they wish and desire to do business and the performance and conducting [fol. 12] of a lawful enterprise, and is in direct violation of the anti-trust statutes, as well as statutes relating to the restraint of trade, and monopolies, in the State of Texas. That in connection with the studied design and conspiracy on the part of these defendant Unions and the members thereof, to ruin plaintiffs' business, should they refuse to meet the demants of said Unions to discontinue transacting business with W. A. Plaster, the said defendants and each of them have threatened to continue such activities against these plaintiffs, which will be of a continuous nature each day. That said defendants are attempting to submerge the constitutional rights guaranteed these plaintiffs and to foist upon said plaintiffs their demands, and which, if continued, denies plaintiffs the right to operate their own business, with the consequent loss and deprivation of their means of earning a livelihood; and that there is no other means of seeking redress against such unlawful and illegal acts, other than by the interposition of a Court of Equity; and that in order for these plaintiffs to seek and secure further redress, would necessitate a multiplicity of suits at a great cost and expense, and especially would such procedure be futire and inadequate by reason of the fact that said defendants are insolvent and without property subject to execution to compensate these plaintiffs for the loss, damage and injury suffered by these plaintiffs in connection with the acts complained of herein, committed by these defendants against these plaintiffs and their place of business. Plaintiffs would further allege that by reason of the unlawful and illegal acts on the part of the defendants, and each of them, directed against these plaintiffs in the conduct of their lawful business, plaintiffs will be forced to engage the services of a truck as well as drivers, in order to secure articles of food and other commodities incidental to the operation of their business in order to carry on their business, and that the reasonable, usual and necessary cost incident to the engagement of said truck and driver is five dollars per day, which sum plaintiffs will be obliged to pay each day since said acts on the part of said defendants have [fol. 13] been initiated, and which sums of money said plaintiffs will be required to pay each and every day hereafter as long as defendants are permitted to carry on such unlawful

acts and illegal picketing. In this connection, plaintiffs would allege that since said unlawful and illegal picketing has been initiated against them, they have been unable to get any person, firm or corporation to deliver to them any food stuffs and other commodities necessary and incidental to the operation of their business, by reason of the influence and baneful persuasion exercised over such former dealers with these plaintiffs by said defendants, and each of them, who, as aforesaid, have conspired to drive these plaintiffs out of business and to ruin and injure their business and property, unless plaintiffs submit to the wishes and whims of said local Unions in their demands that these plaintiffs refuse to do business with W. A. Plaster, and to deal only with persons chosen by these local unions.

VII

Plaintiffs would allege that said defendants, and each of them, have discriminated and are now discriminating against them in the lawful conduct and operation of their business, in that said defendants have selected these plaintiffs' place of business as the only place to picket, in spite of the fact that there are many other business institutions, etc., which are now contracting with W. A. Plaster, and have never been molested by pickets, and have never been approached by any of these defendants and/or their representatives, and had demands made upon them by these defendants as have been and are now being made upon these plaintiffs. That these plaintiffs have an insignificant cafe, and justly feel that a great irreparable harm and injury is being visited upon them by these defendants engaging in secondary picketing and picketing activities, especially since they have violated no law and are merely exercising their constitutional right to engage in trade and commerce and in transacting and doing business with W. A. Plaster.

VIII

Plaintiffs would further show unto the Court that the acts of defendants and each of them, as set out herein, were and are willful, and fraudulent misrepresentations, as well as [fol. 14] malicious, and committed for the sole purpose of injuring and damaging plaintiffs and their place of business, and that their damages are proximately and directly the result of the acts of defendants and each of them, is far in excess of the sum of one thousand dollars.

Wherefore, Premises Considered, Plaintiffs pray citation issue to defendants and plaintiffs pray leave of the Court

to amend this petition and to make parties to this suit of any other persons whose names may hereafter be ascertained who may be found to be engaged in such conspiracy or to be doing any of the unlawful acts herein complained of, or of a similar nature, and for leave to amend this petition to supply any technical deficiency, if such be found to be wanting in this petition.

Plaintiffs further pray that a writ of injunction issue out of this most Honorable Court, agreeable to its practice, enjoining, restraining and prohibiting defendants hereinabove named, and each of them, and all other persons who shall have personal service or otherwise shall have notice of said injunction, from:

Combining, conspiring, and confederating to interfere with, hinder or prevent plaintiffs from transacting business with W. A. Plaster, in the erection of said building.

And from in any way or manner or to any extend whatsoever by use of suggestions, importunities, requests, threats of personal injury, or promise of anything of value or gain, or threatening injury to business, interfering with or stopping plaintiffs or any of the members and employees in their place of business from carrying on and trading with W. A. Plaster in the erection of said building, and from any action of any nature whatsoever tending to damage or destroy the business and good will of these plaintiffs, and from in any manner attempting to carry out their above described conspiracy, and from establishing any picket lines at plaintiffs' place of business, and from resorting to any acts of intimidation or coercion against these plaintiffs, their employees and any of their customers; that a restraining order issue and be continued in full force and effect until a hearing can be had, and that upon a hearing a temporary injunction issue, restraining these defendants, and [fol. 15] each of them, from doing each and all of the aforesaid acts, and further restraining them, and each of them, from influencing any of the said aforesaid acts to be committed or be done; that upon final hearing hereof, said injunction be made permanent; for all costs of court incurred herein, and for such other and further relief, both general and special, lawful and equitable, that they may show themselves justly entitled to.

Bernard A. Golding, Vinson, Elkins, Weems & Francis, Attorneys for Plaintiff.

Duly sworn to by E. R. Ritter, jurat omitted in printing.

In District Court of Harris County

Order to Show Cause Why Temporary Injunction Should Not Be Granted—November 28, 1939

It is ordered that the Clerk of this Court shall issue notice which shall require defendants to appear in the Court Room of this Court on the 6th day of December, A. D. 1939, at 9 A. M., to show cause, if any they have, why a temporary injunction should not be granted upon such petition, effective until the final decree of this Court. Such writ shall be served by the Sheriff or Constable.

Entered, this the 28th day of November, A. D. 1939.

Kenneth McCalla, Judge.

[File endorsement omitted.]

[fol. 16] In District Court of Harris County

[Title omitted]

Original Answer—Filed December 7, 1939

To the Honorable Judge of said Court:

Come now the Defendants in the above styled and numbered cause and for Answer herein say:

1.

That they demur and except generally to Plaintiffs' Original Petition filed herein and say the same is wholly insufficient in law and sets up no cause of action against either of said Defendants and of this they pray the judgment of the Court.

2.

For special exception to Plaintiffs' Original Petition these Defendants say the same, and especially these parts of the same which seek to enjoin the carrying of banners or placards, are wholly insufficient in law and set up no cause of action or right to injunctive relief against either of these Defendants in that it appears from the face of said Petition that Plaintiffs are seeking to enjoin these Defend-

ants from exercising the right and privilege of free speech and of freedom of the press guaranteed to these Defendants by the Fourteenth Amendment to the Constitution of the United States and that the relief prayed for by Plaintiffs in their Original Petition if granted to Plaintiffs by this Court will illegally impair, destroy and abridge the privileges and rights granted to Defendants by the Fourteenth Amendment of the Constitution of the United States and of this the Defendants pray the judgment of the Court.

[fol. 17]

3.

For further special exception to Plaintiffs' Original Petition these Defendants say the same, and especially those parts of the same which seek to enjoin the carrying by Defendants and their agents and members, of banners and placards, are wholly insufficient in law and set up no cause of action or right of injunctive relief against either of these Defendants in that it appears from the face of said Petition that Plaintiffs are seeking to enjoin these Defendants from exercising the right and privilege of free speech and of freedom of the press guaranteed to these Defendants by Section 8 of the Bill of Rights of Texas and that the relief prayed for by Plaintiffs in their Original Petition if granted to Plaintiffs by this Court will illegally impair, destroy and abridge the privileges and rights granted to the Defendants by Section 8 of the Bill of Rights of Texas and of this the Defendants pray the judgment of the Court.

4.

For answer herein if needs be, these Defendants deny all and singular each and every allegation in Plaintiffs' Original Petition contained and say the same are untrue in whole and demand strict proof of same and of this they put themselves upon the country.

5.

For further answer herein if needs be, these Defendants say that they have been guilty of no violence or threatening of violence. That certain of their members have peaceably carried, are carrying and desire to continue to carry placard-, upon the public sidewalks of the City of Houston in

front of Plaintiffs' places of business in a peaceful, law abiding manner with the following inscriptions thereon;

"This place is unfair to Carpenters and Joiners Union of America, Local Number 213."

and also other placards with the following inscriptions thereon:

"This place is unfair to Painters' Local Number 130."

These Defendants say that they now have one representative from each union carrying placards in front of Plain-
[fol. 18] tiffs' places of business with the inscriptions above set forth or similar inscriptions printed thereon.

That defendants and their representatives have not and will not trespass or go upon any property or place of business of Plaintiffs or violate any State law or City ordinance.

That Defendants desire to continue having not more that one representative from each of the two Defendant Unions to stand or walk in a lawful manner upon the public sidewalks in front of each of Plaintiffs' places of business and to carry placards bearing the above or similar inscriptions.

That defendants do not desire nor do they intend and in fact will not do anything more than have at one and the same time, one representative from each of defendants' to lawfully walk upon the public sidewalks in front of each of Plaintiffs' places of business carrying placards with the above set forth or similar inscriptions printed, painted or stamped thereon.

6.

These Defendants say that they have a dispute and disagreement with Plaintiffs and with plaintiffs' contractor, W. A. Plaster, involving labor and labor contracts.

7.

Defendants say that in carrying said placards upon the public sidewalks of the City of Houston, they are exercising and enjoying a privilege and right accorded to them by the Fourteenth Amendment to the Constitution of the United States and By Section 8 of the Bill of Rights of the State of Texas.

8.

These Defendants further say that any judgment or decree of this Court enjoining them from thus exercising their

[fols. 1-4] [Caption omitted]

IN DISTRICT COURT OF HARRIS COUNTY

No. 262,509

RITTER'S CAFE, et al.

vs.

CARPENTERS & JOINERS UNION OF AMERICA, LOCAL NUMBER 213, et al.

ORIGINAL PETITION—Filed November 28, 1939

To the Honorable Judge of Said Court:

[fol. 5] Now in the above styled and numbered cause, come Ritter's Cafe, and E. R. Ritter, hereinafter called Plaintiffs, complaining of Carpenters & Joiners Union of America, Local Number 213, a voluntary incorporated association, with C. P. Driscoll as its business agent, and W. L. Thomas, President thereof, and upon which persons service of citation may be had, and whose officers are located in the Labor Temple, 707½ Rusk Avenue, Houston, Harris County, Texas, and Painters Local Union Number 130, a voluntary incorporated association, with Calus A. West as its business agent, and O. R. Smith, President thereof, and upon which persons service of citation may be had, and whose offices are located at 713 Louisiana Street, Houston, Harris County, Texas, and all of the members of both said defendant associations, hereinafter called defendants, and for cause of complaint, and/or action, would respectively show unto the Court as follows:

I

That E. R. Ritter is the sole owner and operator of "Ritter's Cafe," and so operates under said trade name, same being located at 418 Broadway, Houston, Harris County, Texas, that W. L. Thomas is a citizen and resident of Houston, Harris County, Texas, and is president of said Local Number 213; that C. P. Driscoll is a citizen and resident of Houston, Harris County, Texas, and is business agent of said Local Number 213; that O. R. Smith and Calus A. West are both citizens and residents of Houston,

Harris County, Texas, and are president and business agent respectively of said Local Union Number 130, and that the other members of said Local Unions, to-wit: Number 213 and Number 130, their names being for the most part unknown to these plaintiffs, and too numerous to mention herein, reside in Harris County, Texas, and are now engaged in various occupations pertaining to carpentry and painting businesses, and particularly in connection with the construction of homes, houses, dwellings and business structures, and in the repair of said structures.

II

That plaintiffs and each of them are engaged in conducting and operating a restaurant and/or cafe, known as "Ritter's Cafe," located, as aforesaid, and have been for some period of time, so operating such restaurant and/or [fol. 6] cafe under such name and styled, and have had for, some time and now have in their employment six persons in connection with the operation of such cafe and business.

III

That at no time have plaintiffs been a member of either of the local unions mentioned herein, to-wit: Local Unions Number 213 and Number 130, respectively, in connection with the operation and management of their restaurant business, during the period that such restaurant business has been operated and managed by them; that none of the employees, past or present, in said cafe, have ever been a member of either of said local unions; that said local unions mentioned herein have jurisdiction only over such employees engaged in carpentry work and in the painting industry, and have absolutely no jurisdiction whatsoever over persons engaged in and employees engaged in culinary workers, waitresses, waiters, cooks, etc., and that the only organization, if any, having jurisdiction over such employees, is the Hotel & Restaurant Employees Local Union Number 808. Plaintiffs would further allege that they have not suggested nor imposed any rule applicable to persons employed by them as to whether they are or are not members of any union, and that they have never refused to employ persons because of his or her membership in any union; that in this connection, plaintiffs would aver that they employ only persons in good standing with Local Union Number 808, referred to herein, that they pay their em-

ployees wages which are satisfactory to them and commensurate with their services; that all of plaintiffs' employees are receiving the prescribed scale of union wages, that they are satisfied with same, and with their hours of work and employment; that they are in perfect harmony and accord with plaintiffs herein with respect to wages and general working conditions, that plaintiffs' employees are not dissatisfied in any way, and have no dispute or grounds for any dispute, or altercation with plaintiffs, and no controversy of any kind has existed or exists at this time between plaintiffs and their employees or any of them, and plaintiffs have discharged no employee, nor retained any person and/or employee objectionable to other employees; that none of the employees have struck or threatened to strike or expressed, directly or indirectly, any dissatis- [fol. 7] faction with the operation, conduct or government of plaintiffs' business, and further, plaintiffs would say that there is absolutely no controversy of any kind or character existing or has ever existed between themselves and Local Union Number 808, which assumes jurisdiction over plaintiffs' employees.

IV

That plaintiffs' business is primarily one concerned in the dispensation and sale of cooked food stuffs, and other incidental commodities which are ordinarily offered for sale to the general public by cafes similarly organized as plaintiffs'. That some months prior to the date of filing of this bill of complaint, one of the plaintiffs herein, to-wit, E. R. Ritter, was approached by W. A. Plaster, who is engaged in the contract business, with a view of having said Plaster erect for said E. R. Ritter a small structure situated and located about a mile or two from plaintiffs' present place of business, and located at 2810 Broadway, Houston, Harris County, Texas; that in connection with plaintiffs' arrangement with said W. A. Plaster, it was agreed between said parties that the said W. A. Plaster make his own arrangements with reference to persons engaged and employed in the construction of said building, and that said restaurant would be relieved of any and all concern with the erecting of such structure, and that said W. A. Plaster agreed to proceed with the operation and erection of said structure, with the definite understanding that no discrimi-

nation would be shown as to what employees or persons should be employed in the construction and errection of such building, but that the same should be attended to and maintained by the said W. A. Plaster. That the said W. A. Plaster did proceed in accordance with the terms of said agreement with E. R. Ritter, and that immediately thereafter the beginning of such construction work, said local unions, numbers 213 and 130 respectively, and especially the officials named herein, and each of them, in their respective official capacities, as well as other members of said local unions, whose names are not now known to these plaintiffs, but peculiarly with the knowledge of these defendants, inaugurated a scheme, design and conspiracy to harrass, annoy and virtually ruin the business of these plaintiffs, by [fol. 8] picketing and causing to be picketed these plaintiffs' place of business located some mile or two miles away from where the building is being constructed by authorized pickets, who, by information and belief, are virtually strangers to these plaintiffs, and have never been employed by these plaintiffs, and are virtually known as "professional pickets", and in the alternative, if such pickets are not as deseribed herein, then they are such persons who have been discharged from their employment because of inefficiency, and were instructed by officials of said local unions, and the unions themselves, to picket plaintiffs' place of business, and not the place where such building is being constructed, every hour of the day and night that plaintiffs' place of business is open to the general public, and such pickets march *march* back and forth in front of plaintiffs' place of business with placards reading as follows:

"This place is unfair to Carpenters & Joiners Union of America, Local Number 213"

and

"This place is unfair to Painters Local Number 130"

that such pickets picketed plaintiffs' place of business until the said W. A. Plaster discontinued further progress in connection with the construction of said building; that said W. A. Plaster has resumed his activities in connection with the construction of said building, and said pickets of both union organizations, acting under instruetions, as aforesaid, are now picketing plaintiff's place of business, interfering with said business, and persuading and inducing plaintiffs'

guests from patronizing their restaurant, and interfering with the delivery of foodstuffs and accessories at plaintiffs' place of business, thus making it necessary for plaintiffs to make arrangements for the purchase and delivery of food stuffs necessary to conduct their business, at great expense and with great inconvenience and embarrassment, and constantly annoy, embarrass and harass plaintiffs' patrons and guests who desire to enter and leave plaintiffs' place of business; that said local unions have singled out plaintiffs' place of business, notwithstanding the fact that [fol. 9] it is in good standing with the labor organization having jurisdiction over the employees engaged therein, because it is situated within an industrial belt, and said local unions and their officials, hope by this method to ruin and force plaintiffs out of business, unless the contractor, W. A. Plaster, employs persons selected by said unions in the construction of said building, and that unless these plaintiffs force and compel the said W. A. Plaster to meet the unlawful and illegal demands of the officials and membership of these unions, their place of business will be continually and constantly picketed until plaintiffs be forced to close their doors and abandon the operation of a lawful enterprise and lose a substantial investment already placed in said place of business, known as "Ritter's Cafe," and that the placing of said pickets patrolling in front of said plaintiffs' place of business, has kept a great many and the majority of plaintiffs' former customers from entering and transacting business with them, and has created a great state of confusion and unrest and uneasiness in plaintiffs' employees, with the threatening ultimatum from the officials of Local Union Number 808 that it will compel plaintiffs' employees to walk out and abandon plaintiffs' place of business, thereby creating great loss and damage far in excess of one thousand dollars; all in violation of the anti-trust statutes, combination and monopoly statutes of the State of Texas, and in direct contravention of the statutes as affecting legal picketing, and with the studied design and desire to coerce and force these plaintiffs to abandon a legal and valid as well as binding contract with W. A. Plaster, all of which constitutes a combination and organized effort to intim-ate and coerce plaintiffs from doing business with W. A. Plaster, and to force and compel these plaintiffs to submit to the dictation of these defendants in the management of their own affairs, in connection with the operation

and management of the restaurant business, and that said union officials have advised these plaintiffs that their business would no longer exist unless said E. R. Ritter discontinued said business with W. A. Plaster on the basis and terms set out herein; all of which picketing plaintiffs allege constitutes secondary boycotting and secondary picketing, that such will continue without interruption unless restrained and enjoined as hereinafter plead, with the studied [fol. 10] purpose and design to accomplish the purposes stated by these officials, unless the whims and dictates of said local unions and their membership is accepted by these plaintiffs.

V

That plaintiffs know of no reason why said defendants should picket and/or cause to be picketed, and undertake and conspire to destroy and injure their business, especially so, since they have had no altercation or dealings, directly or indirectly, with said defendant unions, to justify defendants' actions as aforesaid, and plaintiffs aver that such picketing is seriously injuring their business and causing them to suffer loss, and that such picketing has already injured their business and caused them a loss of profit and income to the extent of approximately eight--five per cent; that the defendants and each of them herein, are insolvent, and have no property subject to execution so far as these plaintiffs are advised and believe, and that said defendants, and each of them, in continuing and causing to be continued such picketing, constitute an irreparable harm and damage as well as injury, unless restrained by this Honorable Court with its most gracious writ of injunction; and plaintiffs fear that said defendants, and each of them, will continue the aforesaid threats, acts, conduct and pressure, coercion and influence, and continue to interfere with their contractual relationship and their right of freedom to trade with W. A. Plaster, which these plaintiffs aver is a valuable as well as vested property right, and that defendants will continue to injure plaintiffs in their business and damage them, and interfere with their property rights in dealing and transacting business with whom they please, so long as the same constitutes a lawful act as well as for a lawful purpose, and that they will continue such unlawful acts of intimidation, threats and violence, and the other acts complained of herein, and that as a result thereof, plaintiffs

will suffer irreparably financial loss and damage in the conduct and operation of their business, unless this most Honorable Court, by its writ of restraint and injunction, enjoins defendants and each of them, from continuing said conspiracy and design to ruin plaintiffs' business, and from [fol. 11] continuing such picketing and prevent such unlawful and illegal acts of said defendants and persons acting for and in behalf of such defendants, their members, servants, agents and employees by its writs of restraint and injunction, and plaintiff alleges that the necessity is great in this emergency, for the equitable interposition of this Court with its writs of restraint and injunction, to enjoin the defendants, the members of said local unions, their servants, agents and employees from continuing the acts complained of herein, and from picketing plaintiffs' place of business, and from gathering thereat and carrying signs/or banners, and from harrassing, annoying and damaging plaintiffs' place of business and their right to contract and deal with whom they please, and their right to conduct business at the place designated by them, in the city of Houston, Texas, and from interfering in any way with plaintiffs' employees and plaintiffs' customers and plaintiffs' prospective customers and guests, and others passing who might enter and become patrons of plaintiffs' place of business.

VI

Plaintiffs further aver that said pickets have never been employed by said plaintiffs, and that said defendants are strangers to them, and that none of them are past or prospective employees in their place of business; that plaintiffs have — had any dispute or controversy with said pickets or with said Local Unions Number 213 and Number 130, or any of the members thereof, of any kind or character, and especially have they had no dispute or controversy with reference to wages, hours of employment and general working conditions as between these plaintiffs and their employees, and further that the relationship of employer and employees has never existed and does not now exist between these plaintiffs and any of the members of said Local Unions Number 213 and Number 130, or any member thereof or the defendants to this suit; that no strike has ever been called against these plaintiffs and that by reason of these acts, conduct, intimidation, coercion, threats and other unlawful acts and unlawful conduct as set out herein, are in

right of free speech and of freedom of the press as guaranteed and granted to them by the Constitution of the United States as well as by the Bill of Rights of the State of Texas will be a violation and an abridgement of the Constitution of the United States and also of the Bill of Rights of the State of Texas, and therefore a void judgment.

[fol. 19] Wherefore, having fully answered herein, Defendants pray that Plaintiffs take nothing by this suit and that all injunctive relief prayed for herein by Plaintiffs be in all things denied and that Defendants go hence without day and recover their costs.

Sewall Myer, Attorney for Defendants.

Duly sworn to by Campbell R. Overstreet, jurat omitted in printing.

[File endorsement omitted.]

IN DISTRICT COURT OF HARRIS COUNTY

No. 262,569

RITTER'S CAFE, et al.

vs.

CARPENTERS AND JOINERS UNION OF AMERICA, LOCAL NO. 213, et al.

DECREE AND NOTICE OF APPEAL—July 17, 1940

Be it remembered, that on this 17th day of July, A. D. 1940, came on to be heard the above styled and numbered cause wherein E. R. Ritter, doing business as Ritter's Cafe is Plaintiff, and Carpenters and Joiners Union of America, Local No. 213, C. P. Driscoll, W. L. Thomas, Painters Local Union No. 130, Calus A. West and O. R. Smith, are defendants.

When came all parties by their attorneys of record and announced in open Court that all parties had agreed to waive the jury and submit the entire case to the Court.

[fol. 20] Thereupon the Court dismissed the jury and the hearing of said cause was proceeding with by all parties before the Court.

This Court, having heard the pleadings and evidence and being fully advised in the premises and the parties in open Court having agreed that the evidence shows that the fact findings as set out by Judge George W. Graves in the opinion of the Court of Civil Appeals for the First Supreme Judicial District of Texas, upon a former appeal of this cause, being cause No. 11,026, on the docket of said Court of Appeals, are the true facts in this case, is of the opinion that judgment should be rendered herein perpetuating the temporary injunction heretofore granted herein and denying the recovery of all damages.

Now therefore, it is considered by the Court and so ordered, adjudged and decreed, that the Defendants and each of them and all members of each of said Local Unions be permanently enjoined from picketing or causing to be picketed, Plaintiff E. R. Ritter's place of business at 418 Broadway Street, Houston, Texas, and from carrying banners peacefully and in any other manner upon the sidewalks in front of 418 Broadway Street with the words and inscriptions thereon as set forth in the said Court of Appeals' findings of fact hereinbefore referred to and with any other words or inscriptions thereon.

It is further ordered, adjudged and decreed by this Court that other relief not expressly granted herein is hereby denied.

All costs of this Court are taxed against Defendants.

For all of which let injunction writs, executions and other writs issue necessary to enforce this decree.

To which judgment, action and decree, of this Court the Defendants in open Court duly excepted and gave notice of Appeal to the Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston, Texas.

Ewing Boyd, Judge.

[File endorsement omitted.]

[fol. 21] In District Court of Harris County

[Title omitted]

Findings of Fact and Conclusions of Law—Filed July 31, 1940

In response to request of Plaintiffs, and each of them, in the above entitled and numbered cause, I make and find

the following as my Findings of Fact and Conclusions of Law therein:

Findings of Fact

I

That the plaintiff, E. R. Ritter, at all times material hereto, owned and operated Ritter's Cafe, located at 418 Broadway, in the City of Houston, Harris County, Texas, and that said Ritter was at such times and is engaged in the cafe and restaurant business in the sale and dispensation of cooked foodstuffs and other incidental commodities, usually and generally offered for sale to the general public by similar cafes and restaurants.

II

That in the operation of said restaurant and cafe plaintiff Ritter, at all times material hereto, and for some three years prior thereto, employed as cooks, waiters, and waitresses only members in good standing with Hotel and Restaurant Employees International Alliance, Local No. 808.

III

That Plaintiff Ritter, in the conduct and operation of said restaurant and cafe, at all times material hereto, had no bona fide labor-dispute with his said employees, as to working conditions, hours of employment or wages, and that plaintiff had no dispute with said union.

IV

That said Local No. 808 is the only organization having jurisdiction over plaintiffs' said employees.

V

That on or about November 4, 1939, plaintiff Ritter entered into a written agreement with one W. A. Plaster, a contractor, whereby the latter was to construct and erect [fol. 22] a building for said Ritter, in the 2800 block on Broadway, which is twenty-four (24) blocks removed from plaintiffs' said cafe, being some mile and a half therefrom.

VI

That the business-agents of defendant-unions called upon plaintiff and asked that a provision be inserted in said con-

tract requiring the contractor to use union labor on said job.

VII

That shortly after the said Plaster began erecting said building defendants Carpenters and Joiners Local No. 213, and Painters Local No. 130, by and through and upon the advice of their duly authorized officers and representatives, and by agreement between them, began a picketing campaign against plaintiff and his cafe, by having a member of one of said unions walk back and forth on the sidewalk in front of plaintiff's said cafe, and at no other place, carrying a sign or placard bearing the following inscription, or words to this effect:

"This Place is Unfair to Carpenters and Joiners Union of America, Local No. 213, and Painters Local No. 130, Affiliated with American Federation of Labor."

VIII

That plaintiff at all times material hereto, and for a long time prior theretofore, had employed no carpenters or painters at his said cafe.

IX

That no building was under construction at 418 Broadway at all times material hereto, nor was any painting being done there.

X

That said Local No. 213 and said Local No. 130 had no dispute with plaintiff concerning, in any manner, the conduct and operation of plaintiff's cafe at 418 Broadway.

XI

That no representative of either said Local No. 213 or said Local No. 130, had called upon the said contractor Plaster to request said Plaster or to urge him to use only members of said defendant-locals in the construction of said building in the 2800 block on Broadway.

[fol. 23]

XII

That shortly after plaintiffs filed suit for injunctive relief, the defendants, acting jointly and in pursuance of the

agreement between them, changed or had changed the wording or inscription on the banner or placard being carried by the picket to the following, or words to this effect:

"The Owner of This Cafe Has Awarded a Contract to Erect a Building to W. A. Plaster Who is Unfair to the Carpenters Unions 213 and Painter Union 130, Affiliated with the American Federation of Labor".

XIII

That the said contractor Plaster had no contract with either of the defendant unions and that no dispute existed, at all times material hereto, between said Plaster any *any* of his employees engaged in erecting said building.

XIV

That no employee of Ritter's Cafe and E. R. Ritter, and no employee of W. A. Plaster is on strike.

XV

That the purpose of picketing plaintiff's cafe at 418 Broadway is for the avowed purpose of forcing and compelling plaintiff to require the said contractor, Plaster, to use and employ only members of the defendant unions on the building under construction in the 2800 block on Broadway.

XVI

That plaintiff's damage is not ascertainable, and for that reason such relief is denied.

XVII

That plaintiff's employees, members of said Local 808, quit plaintiff's employ on the day the picket-line was established after a telephone call from the Secretary of said Local 808, and had not returned at the time of the hearing herein.

XVIII

That said Local No. 808 withdrew from plaintiff's cafe it- union card after said picketing began.

[fols. 24-25]

XIX

That the further effect of said picketing has been to make it impossible for plaintiff to have deliveries made to his

cafe by truck-drivers, members of unions not connected with this law suit, of food-stuffs and other commodities necessary to the orderly conduct of his business.

XX

That the further effect of said picketing is to prevent members of all trades-unions from patronizing plaintiff's cafe and to erect a barrier around plaintiff's cafe, across which no member of defendant-unions or any affiliate will go.

XXI

That no violence attended the said picketing of plaintiff's cafe.

Conclusions of Law

I

That plaintiff is engaged in a lawful enterprise in a lawful manner in the operation of his cafe and restaurant.

II

That the picketing at 418 Broadway constitutes an unlawful invasion of Plaintiff's right to conduct a legitimate enterprise and an attempt to interfere illegally with plaintiff's right to contract with third parties.

III

That said picketing, being illegal and for an unlawful purpose, should be restrained.

Ewing Boyd, Judge, 55th Judicial District of Texas.

[File endorsement omitted.]

[fol. 26] Cost bond on Appeal for $300 approved Aug. 2, 1940, and filed Aug. 2, 1940, omitted in printing.

Bill of Costs Omitted in Printing

[fol. 27] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 27a] [Caption omitted]

[fol. 28] IN THE COURT OF CIVIL APPEALS

[Title omitted]

EXCERPTS FROM APPELLANT'S BRIEF, PAGES 1-10—Filed December 14, 1940

Statement of the Nature and Result of the Suit

Appellees Ritter's Cafe and E. R. Ritter filed suit in the District Court of Harris County, Texas, against appellants seeking a temporary and permanent injunction enjoining and restraining appellants from doing a number of acts and things as set forth in the prayer of Appellees' Petition. The Petition of Appellees appears on Pages 2 to 14, inclusive of the Transcript. The prayer of said Petition appearing on pages 13 and 14 of the Transcript.

The trial on the merits of this cause was held on the 17th day of July, 1940, (Tr. pp. 19 and 20) before the Court and without a jury.

After the hearing of said cause on the trial on the merits, [fol. 29] the trial court entered its decree thereon permanently enjoining the appellants from picketing or causing to be picketed, Plaintiff E. R. Ritter's place of business at 418 Broadway in Houston, Texas and from carrying banners peacefully and in any other manner upon the sidewalks in front of 418 Broadway Street with the words and inscriptions thereon as set forth in the Court of Civil Appeals findings of fact (cause No. 11,026) and with any other words or inscriptions thereon (Tr. p. 20). Appellants, who were Defendants in the trial court, excepted to said judgment and decree and gave notice of appeal to the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston (Tr. pp. 20 and 21).

Thereafter on July 31st, 1940, in response to Plaintiffs' request, the trial court filed its findings — fact and conclusions of law (Tr. pp. 21 to 25).

On August 2nd, 1940, the Appellants filed their appeal bond and this bond was on the same day approved and filed by the Clerk of the District Court (Tr. pp. 25 to 27A).

The Transcript and Statement of Facts was filed in this Court on August 9, 1940.

The following are Appellants' Assignments of Error in this cause.

First Assignment of Error

The undisputed evidence in this case shows that Appellants have only exercised the right of free speech and freedom of the press guaranteed to them by the Constitution of the United States and the trial court erred in enjoining and restraining Appellants from the exercise of this right and privilege.

Second Assignment of Error

The trial court erred in enjoining and restraining Appellants from having one of their members to carry a placard in a peaceful manner upon a public sidewalk of the City of Houston, having inscribed thereon a truthful statement, and at least ten feet distance from Appellees' place of business bearing the following inscription:

"The owner of this cafe has awarded a contract to erect a building to W. A. Plaster who is unfair to the Carpenters Union 213 and Painters Union 130, Affiliated with the American Federation of Labor."

[fol. 30] Third Assignment of Error

The acts of Appellants in having one of their members carry said placard in a peaceful manner upon a public sidewalk of the City of Houston and at least ten feet from Appellees' place of business, is a right and privilege guaranteed to these appellants by the Constitution of the United States, and the trial court erred in enjoining and restraining such acts.

Fourth Assignment of Error

The trial court erred in construing the acts of Appellants in having one of their members carry said placard upon a public sidewalk of the City of Houston in a peaceful manner and at least ten feet distance from Appellees place of business, as unlawful picketing and in enjoining and restrain-g such acts.

Fifth Assignment of Error

Members of a union may, without statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the United States Constitution.

Sixth Assignment of Error

No Statute, such as Articles 5152 to 5154, Revised Statutes of Texas, are necessary to Appellants' enjoyment and exercise of constitutional rights and privileges guaranteed under the United States Constitution.

Seventh Assignment of Error

A member of Appellants' union carrying such placard in the manner and at the times and places and under the conditions, as shown by the undisputed evidence, were exercising a right guaranteed to them by the United States Constitution and no statute of Texas can abridge or diminish the effective exercise of these rights to the extent of preventing truthful publicizing of the facts involved in this controversy.

Statement Under First Assignment of Error

The Appellee, Ritter, testified as follows in referring to the member of Appellants' union carrying the Placard:

[fol. 31] "Q. When did the next one appear?

A. Last Friday a week ago.

Q. Now state whether or not you observed any change in the inscription on the placard when he appeared the second time?

A. There was a change.

Q. In what respect?

A. Well, in the writing on the placard.

Q. Will you let us have that please?

A. 'The owner of this cafe has awarded a contract to W. A. Plaster who is unfair to Carpenters Local and Painters Local Affiliated with the American Federation of Labor.'" (S. F. p. 66.)

Appellee Ritter further testified:

"Q. I wish you would tell the Court approximately as best you can in what manner they parade up and down in front of your place of business at 418 Broadway?

A. They walk along the frontage of the building back and forth.

Q. With reference to the entrance to the place of business and the curb, where do they walk?

A. On the outer edge of what is termed the sidewalk.

Q. That is where the public in general walk to and fro?
A. Yes Sir." (S. F. p. 75.)

Appellee Ritter further testified:

"Q. How wide is this sidewalk where they walk, Mr. Ritter, where the pickets walk?
A. I suppose the regular width; I guess about eight or ten feet.
Q. And they walk at the outer edge of it, you say?
A. That's right.
Q. Well what do you mean by the outer edge of the sidewalk?
A. Well I would say ten feet from the entrance to the door.
Q. Now that is all they do, as I understand you, they come there in the morning taking this placard with the inscrip-
[fol. 32] tion on it and walk up and down on the sidewalk, at the outer edge of the sidewalk until you close at night, is that correct?
A. Yes Sir.
Q. Do they have more than one there at a time?
A. Just one." (S. F. p. 76.)

CAMPBELL OVERSTREET, called to the witness stand by appellees, testified as follows:

"Q. Now Mr. Overstreet, what are his instructions with reference to what he shall do out there?
A. Just carry that sign backwards and forwards.
Q. What are his instructions about being peaceful and staying off of properties either owned or leased by Mr. Ritter?
A. He was instructed to remain on public property and not enter into conversation with anybody or have any arguments with anybody pertaining to what he was doing and to be peaceful and law abiding at all times.
Q. Stay out on the sidewalk?
A. Yes Sir.
Q. Now, the number of times you have been out there, is that what has been going on?
A. Yes Sir.
Q. Is that all you want him to do in the future and expect him to do in the future?

A. That is the instructions and that is what we expect them to carry out.

Q. If he does anything besides that what will you do with reference to him?

A. Withdraw him and take him off.

Q. And will you put somebody else out there who will carry out instructions.

A. Yes Sir." (S. F. Pp. 22 and 23.)

For several weeks prior to the time this suit was filed there was no person carrying a placard in or near Ap-[fol. 33] pellees' place of business. (S. F. Pp. 48, 49 and 50.)

That after this suit was filed, Appellants had one of their members begin carrying a placard with the inscription thereon as follows:

"The owner of this cafe has awarded a contract to erect a building to W. A. Plaster who is unfair to the Carpenters Union 213 and Painters Union 130, Affiliated with the American Federation of Labor." (S. F. p. 66.)

That prior to the time this suit was filed, appellants attempted to induce Ritter and Plaster to employ their members on the Ritter construction job and he refused. (S. F. pp. 13 through 17.)

There has been no violence in connection with Appellants' acts and the trial judge so finds in Section 21 of his fact findings. (Tr. p. 25.)

PRAYER TO APPELLANTS' BRIEF APPEARING ON PAGE 30 THEREOF

We therefore respectfully pray that the trial court erred in its decision in this case and by its judgment the constitutional guarantees of Appellants under the United States Constitution have been illegally abridged.

Appellants Respectfully Pray that the judgment of the trial court be reversed and that judgment be here rendered in Appellants' favor.

Respectfully submitted, (S.) Sewall Myer, Frank Campbell Fourmy, Attorneys for Appellants.

[File endorsement omitted]

[fol. 34] IN THE COURT OF CIVIL APPEALS

Tr. Ct. #B-262,569

CARPENTERS AND JOINERS UNION OF AMERICA LOCAL NO. 213, et al.,

vs.

RITTER'S CAFE et al.

Appeal from District Court of Harris County

Opinion Delivered by Chief Justice Monteith

JUDGMENT—February 6, 1941

This cause came on to be heard on the transcript of the record and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed; that the appellants, Carpenters and Joiners Union of America, Local No. 213, C. P. Driscoll, W. L. Thomas, Painters Local Union No. 130, Calus A. West and O. R. Smith, jointly and severally, and their surety, National Surety Corporation, pay all costs in this cause incurred. It is further ordered that this decision be certified below for observance.

[File endorsement omitted.]

IN THE COURT OF CIVIL APPEALS

[Title omitted]

OPINION—Filed February 6, 1941

This is an appeal from a judgment of the District Court of Harris County granting an application of appellees, Ritter's Cafe and E. R. Ritter, for a permanent injunction restraining appellants, Carpenters and Joiners Union of America, Local No. 213, and Painters Local Union No. 130, and their members, from picketing or causing to be picketed, and from carrying certain banners and placards upon the

sidewalks in front of appellees' place of business at 418 Broadway in Houston, Texas.

Appellants answered by general demurrer, general denial and exceptions. They admitted that they had peacefully picketed appellees' place of business, but contended that, in [fol. 35] doing so, they were exercising their rights of free speech and freedom of the press and that any judgment enjoining them from exercising such rights would be a violation and abridgement of their rights under the Fourteenth Amendment to the Constitution of the United States and Section 8 of the Bill of Rights of the State of Texas.

This is the second appeal to this court in this action. The first appeal, which is reported under the same title in Volume 138 S. W. (2), 223, was from an order of the district court of Harris County temporarily enjoining appellants herein from the carrying of the placards complained of and from picketing appellees' place of business. Appellants then, as in this appeal, contended that any action by the court abridging their rights of expressing their views by means of placards on the public sidewalks and from picketing appellees' place of business would constitute an abridgment of their right of free speech.

This appeal involves the right of a court of equity to permanently enjoin a labor organization from picketing and from expressing their views upon a situation affecting themselves by means of banners and placards on the sidewalk in front of an establishment with which they have no labor dispute and where it is proven that such actions are injurious and prejudicial to the business and property rights of the complaining parties.

Upon a hearing of appellees' evidence—no evidence was offered by appellants—it was agreed by the parties that the fact findings, as set out in the opinion of this court in the first appeal herein, were the true facts in the case. On the request of appellees for findings of fact the trial court filed said findings as his findings of fact and conclusions of law. They are as follows:

"Findings of Fact

"(1) That the plaintiff E. R. Ritter, at all times material hereto, owned and operated Ritter's Cafe, located at 418 Broadway, in the City of Houston, Harris County, Texas, and that said Ritter was at such times and is engaged in the

cafe and restaurant business in the sale and dispensation of cooked foodstuffs and other incidental commodities, [fol. 36] usually and generally offered for sale to the general public by similar cafes and restaurants.

"(2) That in the operation of said restaurant and cafe plaintiff Ritter, at all times material hereto, and for some three years prior thereto, employed as cooks, waiters, and waitresses only members in good standing with Hotel and Restaurant Employees International Alliance, Local No. 808.

"(3) That plaintiff Ritter, in the conduct and operation of said restaurant and cafe, at all times material hereto, had no bona fide labor-dispute with his said employees, as to working conditions, hours of employment or wages, and that plaintiff had no dispute with said union.

"(4) That said Local No. 808 is the only organization having jurisdiction over plaintiffs' said employees.

"(5) That on or about November 4, 1939, plaintiff Ritter entered into a written agreement with one W. A. Plaster, a contractor whereby the latter was to construct and erect a building for said Ritter in the 2800 block on Broadway, which is twenty-four (24) blocks removed from plaintiffs' said cafe, being some mile and a half therefrom.

"(6) That the business-agents of defendant-unions called upon plaintiff and asked that a provision be inserted in said contract requiring the contractor to use union labor on said job.

"(7) That shortly after the said Plaster began erecting said building defendants Carpenters and Joiners Local No. 213, and Painters Local No. 130, by and through and upon the advice of their duly authorized officers and representatives, and by agreement between them, began a picketing campaign against plaintiff and his cafe, by having a member of one of said unions walk back and forth on the sidewalk in front of plaintiffs' said cafe, and at no other place, carrying a sign or placard bearing the following inscription, or words to this effect:

"This place is Unfair to Carpenters and Joiners Union of America, Local No. 213, and Painters Local No. 130, Affiliated With American Federation of Labor."

"(8) That plaintiff at all times material hereto, and for a long time prior theretofore, had employed no carpenters or painters at his cafe.

[fol. 37] "(9) That no building was under construction at 418 Broadway at all times material hereto, nor was any painting being done there.

"(10) That said Local No. 213 and said Local No. 130 had no dispute with plaintiff concerning, in any manner, the conduct and operation of plaintiff's cafe at 418 Broadway.

"(11) That no representative of either of said Local No. 213 or said Local No. 130, had called upon the said contractor Plaster to request said Plaster or to urge him to use only members of said defendant locals in the construction of said building in the 2800 block on Broadway.

"(12) That shortly after plaintiffs filed suit for injunctive relief, the defendants, acting jointly and in pursuance of the agreement between them, changed or had changed the wording or inscription on the banner or placard being carried by the picket to the following words, or words to this effect:

"The Owner of This Cafe Has Awarded a Contract to Erect a Building to W. A. Plaster Who is Unfair to the Carpenters Union 213 and Painter Union 130, Affiliated With the American Federation of Labor."

"(13) That the said contractor Plaster had no contract with either of the defendant unions and that no dispute existed, at all times material hereto, between said Plaster and any of his employees engaged in erecting said building.

"(14) That no employee of Ritter's Cafe and E. R. Ritter, and no employee of W. A. Plaster is on strike.

"(15) That the purpose of picketing plaintiff's cafe at 418 Broadway is for the avowed purpose of forcing and compelling plaintiff to require the said contractor, Plaster, to use and employ only members of the defendant unions on the building under construction in the 2800 block on Broadway.

"(16) That plaintiff's receipts at his said cafe and restaurant were some sixty (60%) per cent less while said picketing continued than theretofore.

"(17) That plaintiff's employees, members of said Local 808, quit plaintiff's employ on the day the picket-line was [fol. 38] established after a telephone call from the Secretary of said Local No. 808, and had not returned at the time of the hearing herein.

"(18) That said Local No. 808 withdrew from plaintiff's cafe its union card after said picketing began.

"(19) That the further effect of said picketing has been to make it impossible for plaintiff to have deliveries made to his cafe by truck-drivers, members of unions not connected with this law suit, of foodsfuffs and other commodities necessary to the orderly conduct of his business.

"(20) That the further effect of said picketing is to prevent members of all trades-unions from patronizing plaintiff's cafe and to erect a barrier around plaintiff's cafe, across which no member of defendant unions or an affiliate will go.

"(21) That no violence attended the said picketing of plaintiff's cafe.

"(22) That defendants and each of them will continue to picket plaintiff's said cafe unless restrained by order of this Court.

"Conclusions of Law

"(1) That plaintiff is engaged in a lawful enterprise in a lawful manner in the operation of his cafe and restaurant.

"(2) That the picketing at 418 Broadway constitutes an unlawful invasion of plaintiff's right to conduct a legitimate enterprise and an attempt to interfere illegally with plaintiff's right to contract with third parties.

"(3) That said picketing, being illegal and for an unlawful purpose, should be restrained."

Article 5152, Revised Statutes of 1925, provides that it shall be lawful for any and all persons engaged in any kind of work or labor to associate themselves together and to form trade unions and other organizations for the purpose of protecting themselves in their respective pursuits and employments.

Article 5153 provides that it shall be lawful for any member of such trade union or other organization to induce or

to attempt to induce, by peaceful and lawful means, any person to accept any particular employment or to enter or [fol. 39] refuse to enter or relinquish any employment or pursuit in which such person may be engaged, but that such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof.

Article 4642, Section 1, Revised Statutes of 1925, provides for injunctive relief "Where the applicant is entitled to the relief demanded and such relief, or any part thereof, requires the restraint of some act prejudicial to him."

It is the established law in this state that where a case has been tried without a jury and there was ample evidence in the record to support the findings of the trial court, such findings have the same force and effect as a verdict of the jury on the facts found, and a reviewing court must affirm the trial court's judgment in the absence of other substantial error. O'Connell v. Johnson, 122 S. W. (2), 649, (error refused); New Amsterdam Casualty Co. v. First National Bank, 134 S. W. (2), 470; Guerrero v. U. S. F. & G. Co., 101 S. W. (2), 592; 3 Tex. Jur., pp. 1104, 1125, 1143.

In the instant case there is not only no challenge by appellants of the facts on which the trial court based his judgment, but there was an agreement by the parties that the facts found by the court were the true facts of the case.

While our courts, in construing Articles 5152 to 5154, inclusive, which involve the rights and privileges of "Labor Organizations", have uniformly upheld their right to organize and have legalized the right of picketing with the limited objective of allowing striking employees who have a bona fide dispute with their employer, to induce, by peaceful and lawful means, any person to accept any particular employment or to enter or refuse to enter or relinquish any employment or pursuit in which such person may be engaged, a court of equity will, in proper cases affecting labor organizations, grant injunctions where relief is necessary for the preservation of a business or other property rights. Carter v. Bradshaw, 138 S. W. (2), 187; Gibraltar Savings & Building Ass'n et al. v. Isbel et al., 10 S. W. (2), 1029; Walker et al. v. Fort Worth Ins. Underwriters et al., 79 S. W. (2), 661.

[fol. 40] In this case the trial court based his judgment on the facts that there had been no bona fide labor dispute of any kind between appellee Ritter and his employees, all of

whom were members of a union; that he had employed no carpenters or painters in his cafe, and that neither of appellant unions had any dispute with him concerning the conduct and operation of his cafe at 418 Broadway; that appellee had sustained a substantial loss in the earnings of said establishment in that its receipts were some 60% less during said picketing than theretofore; that his employees had quit his employ the day said picket line was established and that said picketing had made it impossible to have deliveries made thereto of foodstuffs and other necessary commodities by truck drivers who were members of other unions, and that the actions of appellants had prevented the members of all trades unions from patronizing his cafe and had in effect erected a barrier around it across which no member of appellant unions or any of their affiliates would go.

It follows that under the above authorities appellants' acts were prejudicial to the rights of appellees to such an extent as to authorize the intervention of a court of equity for the purpose of preserving such rights.

As stated by this court, speaking through Justice Graves, in the first appeal herein, Carpenters and Joiners Union et al. v. Ritter's Cafe, 138 S. W. (2), 223:

"• • • no right of free speech under the fundamental law of either nation or state is transcended by an injunction restraining the picketing of a place of business by persons (whether members of a labor organization or union or not) who seek to prevent the public from trading with the picketed place or to compel its owner to break a contract which he has with some disassociated third person." (Carpenters and Joiners Union, etc., v. Ritter's Cafe, supra; Webb v. Cooks Union, 205 S. W. 65; Waiters and Waitresses Union v. Papageorge, 230 S. W. 1086; Texas Motion Picture & Vitaphone Operators, etc. v. Galveston Motion Picture Operators, 132 S. W. 299.)

"• • • the right of free speech is limited by the constitutional rights of others to acquire and possess property, [fol. 41] an instance of which is the right to carry on a business in a lawful way. It has been said that it does not follow that because a single individual may under the constitutional guaranty freely speak and write as he pleases without injunctive restraint, an association or combination of persons may lawfully do likewise, as, in such cases, the views ex-

pressed are not merely those of the individual, but the express concerted will and desire of a powerful organization." See Oakes on Organized Labor, 1917 Ed., page 384, Section 880.

"These appellants have no legal grievance merely because the appellees refused to abrogate a private contract they had with W. A. Plaster to which the appellants were neither parties nor in privity; furthermore, they being such strangers thereto, but at the same time having full knowledge thereof, and of the business being conducted between themselves by the parties thereto, they, as such interlopers, not only would have laid themselves liable in damages to a party thereto for having knowingly induced a breach thereof, had that occurred as a result of their acts (Raymond v. Yarrington, 96 Tex. 443, 72 S. W. 580, 73 S. W. 809, 62 L. R. A. 962, 97 Am. St. Rep. 914, and Brown Hardware Co. v. Indiana Stove Works, 96 Tex. 453, 73 S. W. 800), but did in fact subject themselves to the power of a court of equity in this proceeding to protect the appellees against such an unwarranted interference with their peaceful contractual relationship with Mr. Plaster; especially so since obviously no remedy at law would have been adequate, and irreparable injury would probably have resulted, had the interference been permitted to continue. Henke & Pillot v. Amalgamated Meat Cutters, 109 S. W. (2), at page 1085, par. 3, and cited authorities."

A careful analysis of the authorities cited by appellants convinces us that the holdings relied on therein have no practical application to the facts in the instant case. It follows from these conclusions that the judgment of the trial court should be in all things affirmed; it will be so ordered.

Affirmed.

(S.) W. E. Monteith, Chief Justice.

[fol. 42] [File endorsement omitted.]

IN THE COURT OF CIVIL APPEALS

[Title omitted]

APPELLANTS' MOTION FOR REHEARING—Filed February 18, 1941

To the Honorable Judges of said Court:

Come now Appellants in the above styled and numbered cause and move the Court to set aside the decision hereto-

fore rendered by this Court in this cause on the 6th day of February, A. D. 1941, and to grant a rehearing herein and for cause say:

Preliminary Statement

Since the decision was rendered by this Court in this cause on February 6th, 1941, the Supreme Court of the United States has rendered its decision in the American Federation of Labor v. Swing Case from Illinois upholding the exact contentions of Appellants in this case.

The Supreme Court of the United States, in the Swing Case (Decided February 10, 1941) has held exactly contrary to this Court's decision in this case and has swept from beneath this Court's decision every semblance of justification for your decision.

Among the propositions decided in the Swing case, favorable to our contentions herein, is the right of a labor union under the guarantees of the United States Constitution, to picket peaceably a person's place of business even though there does not exist a labor dispute between an employer and employees.

[fol. 43] The Swing case decision denies to State Legislatures and to State Courts the right to prevent peaceful picketing under any circumstances.

Since Appellants are urging, in the case at bar, these same identical contentions this Court, we feel sure, will follow this most recent expression of the United States Supreme Court upon these same questions.

In each of the opinions heretofore written by this Court you have sought to distinguish prior United States Supreme Court decisions by saying that no bona fide labor dispute under Articles 5152, Revised Statutes of Texas, 1925, existed between an employer and his employees.

Appellants are not now and have never asserted any rights under Articles 5152, et seq., Revised Statutes of Texas and we contend these Statutes have no bearing upon appellants' rights since Appellants rely upon the United States Constitutional guarantees.

These United States Constitutional guarantees are not dependent upon any Texas Statutes.

To the contrary, if a Texas Statute abridges these United States Constitutional guarantees, such state statutes are void.

The Swing Case decides each and all of these questions in favor of our contentions and they are no longer open questions in Texas.

In view of this situation these United States Supreme Court decisions cannot be brushed aside by merely stating that "they have no practical application to the facts in the instant case."

We therefore urge this Court to give this changed but present situation your most earnest attention.

Excerpts from the Swing Case will be copied later in this Motion.

I

This Court erred in holding in effect that members of a labor union have no legal right to carry upon a public sidewalk in front of Appellee's place of business, in a peaceful manner, a placard having inscribed thereon a true statement [fol. 44] advising the public of a situation or condition of affairs which affects the labor union and in which the Appellants have an interest.

II

This Court erred in overruling and not sustaining Appellants' contentions upon this appeal, that a member of Appellants' union has a right to carry upon a public sidewalk in front of Appellee's restaurant, in a peaceful manner, a placard having inscribed thereon a true statement advising the public of a situation or condition of affairs — which Appellants have an interest.

III

This Court erred in holding that the Fourteenth Amendment to the Constitution of the United States, did not protect Appellants in thus publicizing the facts connected with this situation existing between Appellees and Appellants.

IV

This Court erred in holding that "no right of free speech under the fundamental law of either nation or state is transcended by an injunction restraining the picketing of a place of business by persons (whether members of a labor combination or union or not) who seek to prevent the public from trading with the picketed place or to compel its

owner to break a contract which he has with some such disassociated third person," since this holding is in direct conflict with and contrary to the decisions of the Supreme Court of the United States upholding the constitutional right of labor unions, guaranteed to them by the United States Constitution, to truthfully publicize the facts of any situation, affecting labor and existing between the owner of the place picketed and the union "in protecting the interests of its members against the harmful effect upon them of Appellees' actions." (Senn case opinion). And this is the law under the Swing decision, regardless of the existence or non-existence of a labor dispute between an employer and his employees.

V

This Court erred in holding that "the right of free speech is limited by the constitutional rights of others to acquire and possess property, an instance of which is the right to [fol. 45] carry on a business in a lawful way," since this holding is in direct conflict with and contrary to the decisions of the Supreme Court of the United States upholding the constitutional right of labor unions, guaranteed to them by the United States Constitution, to truthfully publicize the facts of any situation affecting labor and existing between the owner of the place picketed and the union "in protecting the interests of the members against the harmful effect upon them of Appellees' actions," and especially since the United States Supreme Court has held (Thornhill v. Alabama) that such facts must be regarded as within that area of free discussion guaranteed by the United States Constitution, and that satisfactory hours, wages, etc., "have an importance which is not less than the interests of those in the business or industry directly concerned."

This is now the law under the Swing decision regardless of the existence or non-existence of a labor dispute between an employer and his employees.

VI

This Court erred in its decision because you expressly state in your opinion that you are sustaining the trial court's decision since such trial court "based his judgment on the facts that there had been no bona fide labor dispute of any kind between Ritter (Appellee) and his employees," since this holding is in direct conflict with and contrary to the

decisions of the Supreme Court of the United States and more especially the very recent decision in the Swing case, which expressly holds that the existence of a labor dispute between an employer and his employees is not essential to the constitutional right of Appellants to publicize in a peaceable manner by the use of placards carried upon the public sidewalks, the true facts about such situation.

VII

This Court erred in its decision of this cause in giving controlling effect to state statutes and decisions based upon such state statutes for the reason that appellants base their rights herein upon the guarantees of the United States Constitution and not upon any state statutes of decisions.

[fol. 46]

VIII

This Court erred in basing its decision upon the insubstantial fact findings of the trial court and ignoring that part of the record and findings which indisputedly shows that Appellants were only peaceably publicizing the true facts of the situation existing between Appellants and Appellees by having one of Appellants' members carry a placard on a public sidewalk containing a true statement of the facts involved. This Court erred in this particular for the reason that the Supreme Court of the United States has recently held that no constitutional freedom, guaranteed by the Federal Constitution and least of all the guarantees of the Bill of Rights, can be defeated by insubstantial findings of fact screening reality. The Courts, and more especially the Supreme Court of the United States, have the ultimate power to search the records of state courts to determine these matters where a claim of constitutionality under the United States Constitution is effectively made. (Milk Drivers Union v. Meadowmoor Dairies, Inc. decided by the United States Supreme Court, February 10th, 1941 and reported in United States Law Week of February 11th, 1941).

AUTHORITIES

American Federation of Labor, John Fitzpatrick, Chicago Federation of Labor, et al. v. Ross W. Swing, et al. (Decided February 10th, 1941, by the Supreme Court of the United States and appearing (reported) in United

States Law Week of Date February 11th, 1941, Volume 9, No. 33).

Milk Drivers Union v. Meadowmoor Dairies, et al. (Decided by the United States Supreme Court on February 10th, 1941 and appearing (reported) in United States Law Week of date February 11th, 1941).

Senn v. Tile Layers Protective Union, 57 S. Ct. Rep. 857.

Thornhill v. State of Alabama, 60 S. Ct. Rep. 756.

Snyder v. City of Milwaukee, 60 S. Ct. Rep. 146.

Tovell v. City of Griffin, 58 S. Ct. Rep. 666.

REMARKS (Omitted)

* * * * * * * *

In view of the now settled law on these questions we respectfully ask this Court to grant Appellants a rehearing [fol. 47] herein and that the judgment of this Court be that the judgment of the trial court be reversed and that judgment be rendered for Appellants denying to Appellees all injunctive and other relief.

Respectfully submitted, (S.) Sewall Myer, Frank Campbell Fourmy, Attorneys for Appellants.

Attorney for Appellees:

Mr. Bernard A. Golding,
Niels Esperson Building,
Houston, Texas.

The undersigned Bernard A. Golding and Vinson Elkins, Weems and Francis on this 17th day of February 1941 hereby waive service of a certified copy of this motion for Rehearing & acknowledge receipt of a copy hereof and agree that appellants may file the original & two copies of this motion for Rehearing in the Court of Civil Appeals for the First Supreme Judicial District at Galveston.

Dated Feb. 17th, 1941.

(S.) Bernard A. Golding, Vinson, Elkins, Weems & Francis, Attorneys for Appellees.

[File endorsement omitted.]

IN THE COURT OF CIVIL APPEALS

OPINION ON MOTION FOR REHEARING—Filed April 13, 1941

In their motion for rehearing appellants contend that their original contentions have been upheld by decisions

[fol. 48] rendered by the Supreme Court of the United States in the cases of American Federation of Labor et al. v. Swing, et al., 61 Sup. Ct. Rep., 568, and Milk Drivers Union of Chicago et al. v. Meadowmoor Dairies, Inc., 61 Sup. Ct. Rep., 522, both of which have been decided since our original opinion in this case was handed down.

From a careful analysis of the facts in each of the cases referred to, it is our conclusion that they do not require a reversal of our original opinion herein.

In the case of the American Federation of Labor v. Swing, the plaintiffs were Ross W. Swing, the owner of a beauty parlor, and his employees. Appellant Union attempted to secure a contract with the owner, and, while he was willing for his employees to join the union, he declined to compel them to do so. Thereupon the union picketed his place of business. The Supreme Court of the State of Illinois granted an injunction restraining said picketing for the sole reason that there was no employer-employee dispute between Swing and his employees. In Reversing the action of the Supreme Court of Illinois, the Court held that it would be improper to dispose of the case otherwise than on the face of the decree under review, which rested on the explicit avowal that peaceful persuasion was forbidden in that state because those who were enjoined were not in Swing's employ. The Supreme Court, speaking through Justice Frankfurter, said:

"We are asked to sustain a decree which for the purpose of this case asserts as the common law of the state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him. * * * Such a ban of free communication is inconsistent with the guarantee of freedom of speech. * * * The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ."

As we interpret the opinion, the Court held that, in the absence of criminal acts or other unlawful conduct under the statutes of a state, a union cannot be enjoined from [fol. 49] picketing—in the manner there undertaken—the place of business of an employer with whom it is seeking to contract for its members.

In the case of Milk Drivers Union of Chicago v. Meadowmoor Dairies, Inc., the Supreme Court of the United States affirmed a judgment of the Illinois Supreme Court directing that a permanent injunction be issued restraining the picketing of the retail outlets of the Meadowmoor Dairies. The dairy sold its products to vendors, who in turn sold them to retail outlets. A labor dispute between the dairy and the union resulted in the retail stores, with whom the union had no labor dispute, being picketed. Certain acts of violence took place during the controversy although the pickets were not guilty of acts of violence. The dairy sought an injunction restraining the picketing of said retail stores. The United States Supreme Court, in its opinion said:

"The question which thus emerges is whether a state can choose to authorize its courts to enjoin such acts of picketing, in themselves peaceful, when they are enmeshed with contemporary violent conduct which is concededly outlawed. * * * But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterances are not meant to be sheltered by the constitution. A state may withdraw the injunction from labor controversies but no less certainly the Fourteenth Amendment does not make unconstitutional the use of an injunction as a means of restricting violence. We find nothing in the Fourteenth Amendment that prevents a state, if it so chooses, from placing confidence in a chancellor's decree and compels it to rely exclusively upon a policeman's club. * * * We merely hold that in the circumstances of the record before us the injunction authorized by the Supreme Court of Illinois does not transgress its constitutional power. * * * But just as a state through its legislature may deal with specific circumstances menacing the peace of an appropriately drawn act, Norhill v. Alabama, supra, (310 U. S. 88), so the law of a state may be fitted to a concrete situation through the authority given by the state to its courts. This is precisely the kind of situation which the Norhill opinion excluded from its scope."

[fol. 50] In effect, the court in this case held that, under the constitution, the right of free speech is not unlimited but that, under a proper state of facts, state courts are vested with authority to enjoin picketing by a labor organization in protecting the rights of its citizens where such picketing is "enmeshed" with violence or where it involves such conduct as the state is authorized to declare unlawful

or the breach of such laws as are necessary for the protection and welfare of its residents.

Except in so far as their scope is limited by R. S. Articles 5152, 5153 and 5154, and article 1643 of the Penal Code, R. S. Articles 7426 and 7428 and Articles 1632, 1634 and 1635 of the Penal Code, which prohibit any attempt to create restrictions in the free pursuit of any business or any agreement or threat to boycott a person or association by a refusal to buy from or sell to him or it and to induce others to do so, are in full force and effect in this state.

In the instant case, appellants directed a picketing campaign against appellee with whom the union had no labor dispute and with whom it neither wished, nor was eligible, to contract in any way, for the purpose of forcing a settlement of a dispute between appellant union and W. A. Plaster. The unchallenged findings of the trial court show that the revenues from appellee's business decreased approximately 60% while said picketing continued. Under the facts herein, the only relief available to appellee is through a court of equity.

While the Supreme Court of the United States in the case of Milk Driver's Union of Chicago v. Meadowmoor Dairies, Inc., supra, held that picketing would be enjoined when enmeshed with violent conduct, it quoted with approval from its opinion in the case of Carson v. State of California, 310 U. S. 88, in which it is said: "The power and duty of the State to take adequate steps to preserve the peace and protect the privacy, the lives, and the property of its residents cannot be doubted."

It follows, we think, with equal force, that the Fourteenth Amendment of the Federal Constitution does not make un- [fol. 51] constitutional the use of an injunction as a means of preventing the violation of the Texas anti-trust laws, Articles 1632 et seq., the constitutionality of which have recently been sustained by the Supreme Court of the United States in the case if Tigner v. State of Texas, 310 U. S. 141, in an opinion handed down by Justice Frankfurter on May 6, 1940.

Appellants' motion for rehearing is overruled.

Overruled.

Cody, A. J., concurring.

(S.) W. E. Monteith, Chief Justice.

I concur in the refusal of the motion for rehearing. I base my concurrence, however, upon the view that the con-

stitutional right of free speech cannot be used to implement a boycott. The undisputed facts in this case disclosed a boycott.

(S.) T. H. Cody, Associate Justice.

[File endorsement omitted.]

IN THE COURT OF CIVIL APPEALS

[Title omitted]

ORDER REFUSING MOTION FOR REHEARING—April 3, 1941

Opinion on motion by Chief Justice Monteith.

It is ordered that appellants' motion for rehearing be refused.

[File endorsement omitted.]

IN THE SUPREME COURT OF TEXAS

May 21, 1941.

From Harris County, First District

App. No. 25660

CARPENTERS & JOINERS UNION OF AMERICA, LOCAL NO. 213, et al.

vs.

RITTER'S CAFE, et al.

[fol. 52] CERTIFIED COPY OF ORDER OF SUPREME COURT OF TEXAS REFUSING WRIT OF ERROR—May 21, 1941

(Filed in Court of Civil Appeals—June 9, 1941)

This day came on to be heard the application of plaintiffs in error for a writ of error to the Court of Civil Appeals for the First District and the same having been duly considered, it is ordered that the application be refused; that the applicants, Carpenters and Joiners Union of America, Local No. 213, C. P. Driscoll, W. L. Thomas, Painters Local No. 130, Calus A. West and O. R. Smith, and their

surety, National Surety Corporation, pay all costs incurred on this application.

I, S. A. Philquist, Clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court of Texas on the application for writ of error styled and numbered as above on the docket of said Court.

Witness my hand and the seal of said Court, at the City of Austin, this the 6th day of June, A. D. 1941.

S. A. Philquist, Clerk, By (S.) Carl B. Lyda, Deputy.
(Seal.)

[File endorsement omitted.]

IN THE COURT OF CIVIL APPEALS

[Title omitted]

MOTION TO WITHHOLD MANDATE AND STAY JUDGMENT—Filed June 21, 1941

To the Honorable Judges of Said Court:

Come now the Appellants in the above numbered and styled cause and move this Court to enter its order instructing the Clerk of this Court to not issue at this time a mandate herein and that the judgment in this cause heretofore entered by this Court, be stayed pending the filing of a petition for Certiorari in the Supreme Court of the United States and that Court's action thereon, provided said Peti-
[fols. 53-54] tion be so filed within the time limit provided by the rules of that Court for the filing of said Petition for Certiorari.

These Appellants say that they are now proceeding with the preparation of said Petition for Certiorari, supporting briefs, etc.

Wherefore, the respectfully pray that this motion be granted and that said Order as hereinbefore requested be issued by this Court.

Respectfully submitted, (S.) Sewall Myer. (S.) Frank Campbell Fourmy, Attorneys for Appellants.

[File endorsement omitted.]

IN THE COURT OF CIVIL APPEALS

[Title omitted]

ORDER WITHHOLDING MANDATE AND STAYING JUDGMENT—July 2, 1941

It is ordered that appellants' motion to withhold issuance of mandate and to stay judgment of this Court pending their application to the Supreme Court of the United States for a writ of certiorari and that Court's action on their said application be and the same hereby is granted.

[File endorsement omitted.]

BILL OF COSTS OMITTED IN PRINTING

[fol. 55] IN THE COURT OF CIVIL APPEALS

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed July 22, 1941

Honorable Harry Garrett, Clerk of the Court of Civil Appeals for the First Supreme Judicial District of Texas, Galveston, Texas.

DEAR SIR:

We will thank you to prepare forthwith a transcript of the record in the above entitled and numbered cause, for use by Appellants, Carpenters and Joiners Union of America, Local No. 213, Painters Local Union No. 130 and National Surety Corporation of New York, New York, the surety on the Appeal Bond in your Court in this cause, in presenting a Petition for Writ of Certiorari to the Supreme Court of the United States in said cause.

You will please include in said Transcript the following portions of the record:

(1) Praecipe

(2) Portions of the transcript by the Clerk of the District Court as follows:

(a) Index
(b) Caption
(c) Plaintiff's Original Petition
(d) Defendant's Original Answer
(e) Decree of trial court
(f) Trial Court's "Findings of Fact and Conclusions of Law"

(g) Appeal Bond
(h) Bill of Costs
(i) Clerk's Certificate.

(3) Portions of the Brief filed by Appellants, Carpenters and Joiners Union of America, Local No. 213, and Painters Local Union No. 130, in the Court of Civil Appeals, as follows:

(a) Caption
(b) Statement of Nature and Result of Suit
(c) First Assignment of Error (Submitted as a Proposition)
[fol. 56] (d) Second Assignment of Error (Submitted as a Proposition)
(e) Third Assignment of Error (Submitted as a Proposition)
(f) Fourth Assignment of Error (Submitted as a Proposition)
(g) Fifth Assignment of Error (Submitted as a Proposition)
(h) Sixth Assignment of Error (Submitted as a Proposition)
(i) Seventh Assignment of Error (Submitted as a Proposition)
(j) Statement under First Assignment of Error (Submitted as a Proposition)
(k) Prayer to Appellants' Brief.

(4) Judgment of the Court of Civil Appeals.
(5) Opinion of the Court of Civil Appeals.
(6) Appellants' Motion for rehearing in the Court of Civil Appeals omitting the "Remarks".
(7) Order overruling appellants' motion for a Rehearing in the Court of Civil Appeals.
(8) Written opinion of the Court of Appeals overruling Appellants' Motion for Rehearing.
(9) Portions of Appellants' Application for Writ of Error to the Supreme Court of Texas as follows:

(a) Caption
(b) Erroneous holdings of Court of Civil Appeals appearing on page 5 of said Application and being three in number.
(c) Grounds of Jurisdiction appearing on pages 11 to 17 of said Application.

(Clerk's Note: Paragraph "(9)" hereof has been omitted from this transcript pursuant to letter from Hon. Sewall Myer of date July 23, 1941)

(10) Order of the Supreme Court denying Petition for Writ of Error.

(11) Bill of Costs.

(12) Certificate.

Respectfully requested, (S.) Sewall Myer, Attorney for Petitioners.

For and in behalf of Ritter's Cafe and E. R. Ritter, each and all of the Appellees in the above entitled and numbered cause, we hereby acknowledge receipt of the Original and a copy of the above praecipe on this 17th day of July, 1941.

(S.) Bernard A. Golding. (S.) Vinson, Elkins, Weems & Francis, Attorneys for Appellees.

[File endorsement omitted.]

[fol. 57] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 58] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 527

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the Court of Civil Appeals of the State of Texas, First Supreme Judicial District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.